



**Concise Explanatory Statement
(Responsiveness Summary)**

Amendments to Chapter 173-98 WAC

Uses and Limitations of The Water Pollution Control Revolving Fund

Washington State Department of Ecology

Water Quality Program

A.O. 98-10

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**Concise Explanatory Statement
(Responsiveness Summary)**

For:

Amendments to Chapter 173-98 WAC

Uses and Limitations of The Water Pollution Control Revolving Fund

**Prepared by Brian Howard and Tim Hilliard
Washington State Department of Ecology
Water Quality Program**

Publication No. 98-35
November, 1998

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Executive Summary:..... 1

I. Introduction and Background Statement 2

II. Differences Between Proposed Rule and Adopted Rule..... 4

 Differences Between Existing Rule and Proposed Rule4

 Differences Between Proposed Rule and Final Rule.....8

III. Summary of Comments and Responses 10

 Oral Comments at Public Hearing10

 Written Comments10

IV. Summary of Public Involvement Actions..... 12

V. Implementation Plan..... 13

Appendices 15

Appendix A: Public Notices 16

**Appendix B: Chapter 173-98 WAC: Uses And Limitations of the Water
Pollution Control Revolving Fund 22**

Appendix C: Comments on Proposed Changes to WAC 173-98..... 37

Executive Summary:

The Department of Ecology's Water Quality Program is amending Chapter 173-98 WAC, "Uses and Limitations of The Water Pollution Control Revolving Fund." The current language was written and adopted in September, 1989 to implement Chapter 90.50A RCW.

The Washington Department of Ecology administers the Washington State Water Pollution Control Revolving Fund (SRF). This program provides low-interest loans to local governments for water quality protection and improvement. The SRF was established by Congress in 1987 as a means to phase out the federal construction grant program for wastewater treatment facilities. In response to the new federal program the Washington State Legislature created the SRF program in 1988 and it was codified as Chapter 90.50A RCW, Water Pollution Control Facilities - Federal Capitalization Grants on February 4, 1988. The RCW, in part, required Ecology to establish a rule to implement the SRF program.

Ecology staff began preparing the SRF rule in late 1988 and it became effective on September 29, 1989 as Chapter 173-98 WAC (Uses and Limitations of the Water Pollution Control Revolving Fund). The SRF rule has worked reasonably well but it needs to be updated in order to improve Ecology's flexibility in providing effective and efficient financial assistance to local governments.

Ecology is inserting new sections into the WAC, deleting certain sections of the WAC, and modifying others. Many of these changes are part of an ongoing effort to achieve a level of consistency between the SRF and the Centennial Clean Water Fund. Others are housekeeping and clarifications of the existing rule.

This explanatory statement describes the rule amendment process and the changes, responds to comments made during the public comment phase, and the outlines the implementation plan. Questions concerning the subject matter discussed here should be directed to Brian Howard at (360)407-6510 or Tim Hilliard at (360)407-6429.

I. Introduction and Background Statement

The Washington Department of Ecology administers the Washington State Water Pollution Control Revolving Fund (SRF), a loan program providing low-interest loans to local governments for water quality protection and improvement. The SRF was established by Congress in 1987 as a means to phase out the federal construction grant program for wastewater treatment facilities. In response to the new federal program, the Washington State Legislature created the SRF program in 1988 and it was codified as Chapter 90.50A RCW, Water Pollution Control Facilities - Federal Capitalization Grants on February 4, 1988. The RCW, in part, required Ecology to establish a rule to implement the SRF program. The program has been coordinated with other programs since its inception, including the federal construction grant program for wastewater treatment facilities and later the Washington State Centennial Clean Water Fund (Centennial Fund) and the Clean Water Act Section 319 Nonpoint Fund.

The end of funding for new projects under the federal construction grant program removed the need for consistency between the two programs, while the creation of the Centennial Fund created a situation where opportunities for further consistency and complimentary program requirements as well as coordination between the programs (which now share a high level of integrated management). Moreover, a decade of administration of the program has helped illuminate areas in which the regulation could be more streamlined and “user-friendly,” leading to ideas about needed “housekeeping” changes.

The proposed rule would address the consistency and coordination issues, as well as the needed housekeeping.

Ecology staff began preparing the SRF rule in late 1988 and it became effective on September 29, 1989 as Chapter 173-98 WAC (Uses and Limitations of the Water Pollution Control Revolving Fund). The SRF rule has worked reasonably well but it needs to be updated in order to improve Ecology’s flexibility in providing effective and efficient financial assistance to local governments.

Some aspects of the management of the SRF have been addressed through policy and guidelines in the past. Current thinking, especially since the Hillis vs. the Department of Ecology ruling, says that policy involved with deciding who gets money and for what should be in rule form.

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Amendment of the rule does not require going through SEPA because “standards” are not being proposed (see chapter 197-11-704(2)(b)(i) WAC). Therefore, it is considered categorically exempt.

The rule does not implement pollution prevention measures. Certain aspects of the SRF incorporate pollution prevention measures, including application questions (used in the prioritization of applications) which address pollution prevention. For example, one of the questions on the Fiscal Year 1999 Application asks “If water quality standards are *not* being violated, how will potential water quality degradation be addressed through pollution prevention measures of the project?”

Water Quality staff will work closely with Rules Unit staff to ensure that the final language will be clear and usable.

The final language of the rule is nearly identical to the proposed rule. Ecology is making minor changes to improve clarity without changing the meaning or processes. One section was accidentally struck out during editing and is being reinstated in the final rule language. This document describes the changes and the process followed to ensure that the public was given an opportunity to influence the final language of the rule if they desired to.

II. Differences Between Proposed Rule and Adopted Rule

Differences Between Existing Rule and Proposed Rule

The following sections are a discussion of significant changes proposed to rule as it was published in the State Register for public review and comment. Each major change includes a discussion of the rationale for the change.

WAC 173-98-030 Uses of the money and policies for establishing terms of assistance.

Subsection 2

Proposal: Revise current subsection that describes the process used to determine interest rates and terms of financial assistance. Part of the change is to spell out how rates are determined using current practices under guidelines. A major change from current practices is the new category of limiting interest-free loans (other than in certain cases of financial hardship assistance) to those loans that will be used for projects that will be completed in less than two years of the date of the loan award and will be repaid in less than five years. Loans repaid in less than five years but used for projects that will not be completed in less than two years of the date of the loan award will be charged 40 percent of the market interest rate. Other categories will remain the same as the current practice.

Rationale: The subsection currently does not discuss how interest rates are determined. It references that terms of assistance will be established in the guidelines.

New Subsection 3

Proposal: Add a new subsection that describes the criteria and process for determining if an applicant is eligible to receive financial hardship assistance.

Rationale: The process for determining financial hardship assistance is currently in guideline and should be in rule.

WAC 173-98-050 Limitations on the use of funds and establishment of categories

Subsection 3

Proposal: Update subsections referencing the 120-day reserve period to sign a loan agreement to one year. This will ensure timely use of funds while recognizing the federal requirement that loan agreements must be signed within one year of receiving the award of the federal capitalization grant. The 120-day reserve period was developed to help ensure that SRF loan agreements would be negotiated and signed by local governments in timely manner and that unobligated funds remaining after the 120 day reserve period could be reobligated to other local governments who did not receive all or any funds requested on the Intended Use Plan (IUP).

Rationale: Since the first SRF funding cycle the majority of local governments offered loans were not able to negotiate and sign loan agreements within the 120-day reserve period and many found it difficult to do so even with a 240-day extension.

Background: This is a result of local governments having other priorities ahead of negotiating its SRF loan and not having loan agreement prerequisites complete; such as approval of required engineering documents by Ecology, a finalized resolution or ordinance authorizing loan repayment, favorable opinion from the local government's legal council that it can fulfill all conditions included in the loan agreement, and evaluating other grant and loan options.

Subsection 4

Proposal: Clarify subsection four by adding the words "commercial and institutional."

Rationale: The subsection is unclear about the eligibility of commercial and institutional water pollution control activities and facilities projects to receive SRF funding. The SRF program is not designed to assist businesses or government with public money. Therefore, the subsection was written to exclude activities and facilities that are primarily intended to control, transport, treat, dispose of wastewater from commercial, institutional, and industrial flows.

Subsection 6

Proposal: Delete the fifty-five percent grant equivalency requirement. This requirement was established to help ensure that when public bodies receive a 50 percent state grant for a wastewater treatment facility and an SRF loan the total grant equivalent would not exceed 55 percent. The five percent grant benefit is calculated by money saved using an SRF low-interest loan in lieu of borrowing funds at market rates. If the total grant equivalent was above 55 percent the SRF interest rate and term would be adjusted to equal 55 percent.

Rationale: The provision only adds complexity to the SRF program. Due to the fact that the SRF is a loan program, Ecology proposes to allow local governments and Indian tribes to select interest rates and terms that fit its budget as the funds will eventually revolve back to the SRF.

New Subsection 6

Proposal: Add a new subsection that lists non-eligible projects and project components.

Rationale: The new subsection will clarify non-eligible project costs. These are currently in guideline.

Subsection 7

Proposal: Delete the requirement that allowed Ecology to sign loan agreements without an approved facilities plan.

Rationale: This provision was included in the rule to help ensure that Ecology could secure all federal funds reserved for the SRF program. The language is outdated and should be deleted. Federal regulations require that loan agreements (binding commitments) are signed within one year of receiving the federal grant award. They also require that a federal level facility plan must be prepared and approved in order to receive SRF funding for design/construction of wastewater facilities. At the inception of the SRF program, many applicants did not have a federal level facility plan prepared and approved for its project when they applied for design/construction funding and consequently would not have been able to sign loan agreement without this provision. Ecology allowed applicants to sign loan agreements for design/construction but would not disburse funds until the facility plan was approved.

WAC 173-98-060 Allowance provisions for planning and design for facilities

Section 060

Proposal: Delete the entire section.

Rationale: The allowance for planning/design was developed to address the major differences that engineering firms charge local governments and Indian tribes for preparing planning and design documents and was intended to cover only a percentage of those costs. The planning/design allowance table was patterned after the federal construction grant program. Due to the fact that the SRF is a loan program, Ecology proposes to allow local governments to apply for as much funding as they need to finance planning and design costs for wastewater treatment facilities as the funds will eventually revolve back to the SRF.

WAC 173-98-060 Step process for facilities and nonpoint activities

New Section 060

Proposal: Add a new section that outlines the step process for facilities and activities, effectively as it now exists in guidelines. One major change is that approvable documents related to preceding steps (such as design) will be enough to allow the applicant to APPLY but the documents must be approved thirty days prior to the issuance of the draft offer list in order for the project to be on the list.

Rationale: The step process is a systematic method which local governments and Indian tribes must follow for facility projects to be eligible for loans. The process requires an applicant seeking loan funding to proceed according to certain steps which include site specific facility planning, design preparation based on the preferred cost effective alternative chosen in the planning document, and construction. In most cases, the step process for nonpoint activities is not required for local governments and Indian tribes to be eligible for loans. The exceptions include agricultural best management practices that involve improvements on private property and lake restoration projects. The step process for activities includes planning and then implementation. Planning involves the identification of problems and evaluation of cost effective alternatives, based on environmental and economic considerations, for correcting and preventing water quality problems. Specific activities may include planning for watershed management, ground water management areas, lake restoration, and water quality assessment and other related

activities. Implementation includes the actual implementation of the project based on the approved planning document. The change related to approvable documents is made because of problems in the last few funding cycles where documents called “approvable” were not really ready and turned out to take significant time for approval. This leads to major problems with readiness to proceed and money was not used in a timely manner.

WAC 173-98-070 Compliance with applicable laws, regulations, and other requirements.

Subsection 8

Proposal: Update the “Appeals” subsection to follow our current procedure.

Rationale: Current procedure should be in rule form. Ecology’s procedure includes:

- Grant or loan recipient files A formal written appeal of an active grant, loan or contract, within 30 days of a disputed written decision made by staff.
- A three member appeals panel, named by the Water Quality Program Manager, will review the appeal and act as an advisory group to the Program Manager.
- Water Quality Program Manager renders decision on appeal.

WAC 173-98-090 Project priority list and intended use plan process

Subsection 1

Proposal: Delete the sentence in subsection one that states “The project priority list required by section 216 of the act will be the intended use plan (IUP) beginning in fiscal year 1990 and thereafter.”

Rationale: The sentence is outdated and serves no useful purpose.

Subsection 7

Proposal: Update the reference to the financial capability assessment form and replace it with financial hardship analysis form

Rationale: The hardship form has been updated and the title of it has been modified.

WAC 173-98-100 State environmental review process

Subsection 1

Proposal: Modify the reference that only Environmental Protection Agency (EPA) issued environmental documents satisfy federal environmental requirements. The reference to EPA would be replaced with documents issued by a federal agency under the National Environmental Policy Act.

Rationale: The change will allow any environmental document issued under NEPA to satisfy EPA’s environmental requirements.

WAC 173-98-110 Repayments and security pledge of loans

New Subsection 4

Proposal: Add a new subsection that deals with loan security.

Rationale: To help ensure repayment of loans, security provisions need to be included in the WAC. The language is currently contained in the SRF loan agreement.

WAC 173-98-120 General Provisions

Subsection 3

Proposal: Delete subsection three which references self-certification for engineering compliance.

Rationale: This section was struck out by accident in the version published in the State Register. See the next part of this document, “Differences Between Proposed Rule and Final Rule.”

Subsection 4

Proposal: Delete subsection four which references legislative reporting.

Rationale: The language is outdated. The 1997 – 1999 capital budget included new legislative reporting language for programs funded from the water quality account.

Differences Between Proposed Rule and Final Rule

There were minimal comments on the proposed changes and consequently very little was changed between the proposed rule and the final rule language. The changes, discussed below, included two items related to loan terms changed on the advice of bond counsel, and one change which is intended to correct an oversight which was made inadvertently just before the draft was sent to the State Register.

WAC 173-98-020 Definitions

Subsection 6: Definition changed to reflect changes in WAC 173-98-110(4)(b)(ii) - see below.

Subsection 29: Definition added to reflect changes in WAC 173-98-110(4)(b)(iii) - see below. The following subsections were renumbered.

WAC 173-98-110 What are the repayment options and schedules?

WAC 173-98-110(4)(b)(ii): Changes made to reflect the final version of a revised and updated “boilerplate” (model) loan agreement developed with the assistance of bond counsel attorneys. The

most important change in this paragraph is to reduce the coverage requirement from 125 percent to 120 percent. The lower requirement is less onerous to local governments and tribes and was determined not to have an adverse affect on the perpetuity of the fund.

WAC 173-98-110(4)(b)(iii): Changes made to reflect the final version of a “boilerplate” (model) loan agreement developed with the assistance of bond counsel attorneys. The changes in this paragraph are intended to make the reserve account more understandable, but do not change the meaning.

WAC 173-98-120 General Provisions

Subsection 3

Proposal: In the draft, it was proposed to delete this subsection which references self-certification for engineering compliance.

Rationale: This section was struck out by accident in the version published in the State Register. On the last draft, being prepared to send to the Register, sections three, four and five were struck out, instead of just sections four and five. However, none of the explanatory material (which has been used at the three public workshops and the public hearing) mentioned the change, nor was it the subject of any commentary at any of the public meetings or in written form. The deletion of this subsection would have an adverse impact only a very few of the largest public bodies on the state (those that would have the capabilities to take on the delegation of certification for engineering compliance). The subsection’s existence has no impact on other jurisdictions. It has always been the intent of staff to leave this subsection in the rule, and it is replaced, without strikeout, in the final rule.

III. Summary of Comments and Responses

Oral Comments at Public Hearing

There were no oral comments made during the public hearing held on October 29, 1998 so there are no responses.

Written Comments

The public comment period ran from October 13, 1998 to November 6, 1998. During that time period, two written comments were received. Copies of the written comments are provided in the appendix, numbered Written Comment 1 and Written Comment 2.

Written comment 1:

Summary of comment: The Director of the Public Works Department of the City of Pasco made three points in his letter.

1. On Section 030(2): Money coming from taxes should not be loaned out at higher interest rates; three percent would be a good maximum rate
2. On Section 050: Systems owned by cities to spray agricultural (food processing) wastewater onto agricultural lands should be eligible for funding
3. On Section 050(5): Construction claims due to unforeseen subsurface conditions should be eligible for additional SRF funds.

Response: The three points summarized above are addressed in order.

1. Federal law, state law, and the State's agreements with the EPA require that the perpetuity of the fund be insured. State law (RCW 90.50A.070) requires that the department set loan terms and interest rates. Where acceptable due to the short-term nature of a project and its repayment schedule, or as a result of a hardship determination, low interest rates or interest-free loans are possible under the new rule. Even the highest rate allowed under the new rule are well below market rates.
2. Commercial, industrial, or institutional wastewater flows (including agricultural processing waste as cited in the comment) are eligible if they constitute a small portion of the flow handled by the wastewater treatment system. Small flows are defined as less than five percent from an individual source and less than 30 percent from collective sources. The SRF program is intended to fund the needs of local government and tribes and should not be used for projects that are predominantly serving the needs of commercial, industrial, or institutional dischargers.
3. SRF loans may include contingency amounts to cover construction bid overruns up to 110 percent of the estimated cost and change orders of five percent of the total estimated costs. However, these

need to be built in from the time the application is made as the state is required to have all the projects and the associated dollar amounts listed on an Intended Use Plan submitted to the EPA each funding cycle before the state receives the capitalization grant that funds the SRF program. As a result, loan amounts cannot be changed upwards after that point under normal conditions, although they may be in special situations if there is recently repaid principal and interest.

Written comment 2:

Summary of comment: The city Manager of the City of Chehalis addressed one point in his letter. In reference to Section 090(2) he was concerned about “readiness to proceed” becoming a mandatory factor rather than a discretionary factor in priority establishment.

Response: There has been much pressure on Ecology from a variety of sources to move money through the system more quickly. With a high degree of competition for the funds, a far greater level of need than funding can cover, and many projects ready to proceed immediately, the reason for including readiness to proceed as a factor that is always included in the evaluation of a project. However, it is a prioritization factor, not a prerequisite, and only one of many prioritization factors. Also, if it is a good project that loses enough points to fall off the fundable portion of the list due to readiness to proceed issues, another funding cycle will occur in a year and they should be funded then if they are ready. Meanwhile, projects which were ready would have had a chance to move forward.

These were the only written comments received.

IV. Summary of Public Involvement Actions

Public involvement in this rule process was a top priority from the start. Widespread public notice was given, three public notices were held, and after another round of public notice, there was a public comment period and a hearing.

The public involvement began with a chapter in the Rule Development Plan which outlined the public involvement strategy. In the plan, the “regulated community” was defined as the local governments, special districts, tribal governments, and state agencies that are eligible for SRF loans.

An entry in the Washington State Register WSR 98-12 in June, 1998 announced that Ecology intended to amend the rule and that workshops and hearings would be held. This document included informational contacts for those seeking more information.

In June, using a mailing list of all known eligible entities and other interested parties (such as environmental groups and associations), staff mailed public information workshop announcements (see appendix) to all the affected parties. An announcement of the workshops also appeared in the Ecology Public Events Calendar which is available to a mailing list, sent to the news media, and is posted on the Internet. In June staff held workshops in Spokane, Yakima and Lacey.

In October, Ecology sent a press release to news media around the state (see appendix). A Public Hearing Notice (see appendix) went out at the same time to the same groups as had been sent the workshop announcement in June. Public notices appeared in the Seattle Daily Journal of Commerce (Oct. 13, 1998) and the Spokane Business Journal (October 15, 1998) (see appendix). The news release, the Focus Sheet, and the public notices all announced a public hearing and a public comment period. An announcement of the hearings also appeared in the Ecology Public Events Calendar.

The Washington State Register WSR 98-19 in October, 1998, had an entry containing the entire text of the rule with the proposed changes, the time and place of the hearings, the information on the public comment period, and informational contacts.

The public hearing was held on October 29, 1998 in Lacey. The public comment period ran from October 13, 1998 to November 6, 1998.

V. Implementation Plan

The changes are mostly housekeeping and clarification. As such, little change in the way business is currently conducted is needed. The only changes that will have a major impact on the stakeholders are the extension of the reserve (signing) period from 120 days to a full year, and the deletion of the design allowance, which formerly limited the percentage of a project that could be used for paying for design.

Regional and headquarters staff will be briefed by e-mail about the changes and the annual guidelines will be edited to reflect the rule changes.

In January, 1999, annual application workshops will be conducted in four locations statewide. At these workshops local government staff, consultants, and Ecology regional staff will be briefed on the changes.

Any members of the public, local government staff, legislators and staff, or Ecology employees needing clarification will be given as much attention as needed to explain the changes.

Appendices

A. Copies of Public Notices

B. Rule Language

C. Comments

Appendix A: Public Notices

- 1. *Public Meeting Notice: Water Quality Program Proposes Rule Changes to Loan Program***
- 2. *Public Hearing Notice: Water Quality Program Proposes Rule Changes to Loan Program***
- 3. **Press Release****
- 4. **Public Notice Printed in *Spokane Journal of Business*****
- 5. **Public Notice Printed in *Seattle Daily Journal of Commerce*****



Public Meeting Notice

Water Quality Program Proposes Rule Changes to Loan Program

Ecology is proposing to make changes to Chapter 173-98 WAC, *Uses and Limitations of the Water Pollution Control Revolving Fund*, on September 2, 1998. The Washington State Department of Ecology administers the Washington State Water Pollution Control Revolving Fund (SRF). The federally-funded program provides low-interest loans to local governments and Indian tribes for water quality protection and improvement. Chapter 173-98 WAC, which guides the program, became effective in 1989. While the program has worked well over the years, the rule needs to be updated in order to improve Ecology's ability to provide effective and efficient financial assistance to local governments and Indian tribes.

Ecology is proposing to amend the rule by inserting new sections, deleting other sections, and making modifications to others. Many of the proposed changes relate to an ongoing effort to achieve a high level of consistency between the SRF and the state-funded Centennial Clean Water Fund, which provides grant and loan money for water quality projects. Another reason for some of the proposed changes is a need to ensure the perpetuity of the fund. Other changes are simply "housekeeping" or are intended to clarify the existing rule.

Three workshops will be held around the state in June to help familiarize local governments with the proposed changes. We plan to hold a public hearing in September to take formal testimony about the proposed changes. Formal testimony will be taken in written form as well.

Workshops:

- Spokane:** Wednesday, June 24, 10 A.M. - Noon, Department of Ecology Conference Room, N. 4601 Monroe, Suite 100, Spokane, WA
- Yakima:** Thursday, June 25, 10 A.M. - Noon, Department of Ecology, Waterfall and Seafoam Rooms, 15 West Yakima Ave., Suite 200, Yakima, WA
- Lacey:** Tuesday, June 30, 10 A.M. - Noon, Department of Ecology, Room 1-S17, 300 Desmond Drive, Lacey, WA

Hearing:

- Lacey:** Wednesday, September 2, 10 A.M. - Noon, Lacey, Department of Ecology, Auditorium, 300 Desmond Drive, Lacey, WA

For more information, or directions to the meetings, call Brian Howard at (360)407-6510 (or e-mail brho461@ecy.wa.gov).



Public Hearing Notice

Water Quality Program Proposes Rule Changes to Loan Program

Ecology is holding a public hearing on October 29, 1998 to discuss changes to Chapter 173-98 WAC, *Uses and Limitations of the Water Pollution Control Revolving Fund*. Public testimony may be presented at the hearing or in written form. Details about the hearing and the public comment period are shown below.

The Washington State Department of Ecology administers the Washington State Water Pollution Control Revolving Fund (SRF). The federally-funded program provides low-interest loans to local governments and Indian tribes for water quality protection and improvement. Chapter 173-98 WAC, which guides the program, became effective in 1989. While the program has worked well over the years, the rule needs to be updated in order to improve Ecology's ability to provide effective and efficient financial assistance to local governments and Indian tribes.

Ecology proposes to amend the rule by inserting new sections, deleting other sections, and making modifications to others. Many of the proposed changes relate to an ongoing effort to achieve a high level of consistency between the SRF and the state-funded Centennial Clean Water Fund, which provides grant and loan money for water quality projects. Another reason for some of the proposed changes is a need to ensure the perpetuity of the fund. Other changes are simply "housekeeping" or are intended to clarify the existing rule. The complete text of the proposed rule is available on the Internet at:

http://www.wa.gov/ecology/leg/arcc_all.html

Ecology held three workshops around the state in June, 1998, to help familiarize local governments and other interested persons with the proposed changes. Now we are planning to hold a public hearing to take formal testimony about the proposed changes. Formal testimony will be taken in written form as well.

Hearing:

The public hearing is scheduled for Thursday, October 29, from 10 A.M. to 12:00 Noon, at the Department of Ecology Building, Room 1-S17, 300 Desmond Drive, Lacey, WA.

For more information or directions to the meetings, call Brian Howard at (360)407-6510 (or e-mail brho461@ecy.wa.gov).

Public Comment Period:

The public comment period is from October 13, 1998 to November 6, 1998. Comments may be presented verbally at the hearing. Written comments may be given to staff at the hearing or they may be sent, delivered by hand, or faxed to Brian Howard, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, Fax: (360)407-6426.

FOR IMMEDIATE RELEASE - Oct. 26, 1998
98-180

CONTACT: Mary Getchell, Public Information Manager, (360) 407-6157; pager, (360) 534-8590
Brian Howard, Loan Coordinator, (360) 407-6510

Rule proposed to help streamline water-quality loan process

OLYMPIA - The Washington State Department of Ecology (Ecology) is seeking public comment on a proposed rule that should make it more efficient to process water quality loans for local and tribal governments.

The low-interest loans are sponsored by the federal government and administered by Ecology to help local governments and Indian tribes upgrade or expand wastewater treatment plants. The loans are also used to prevent water pollution problems such as elevated temperature and fecal coliform bacteria, which come from practices such as agriculture, logging and urban development. Through 1997, Ecology had provided approximately \$325 million through the loan program.

The proposed rule change is aimed at improving the effectiveness and efficiency of the program by:

- Making the program more consistent with the state-funded Centennial Clean Water Fund, which provides grant and loan money for water quality projects;
- Ensuring the continued existence of the fund program; and
- Clarifying the existing loan program rule.

People may get more information, ask questions and offer formal testimony on the draft rule at a public hearing this month from 10 a.m. to noon on Thursday, Oct. 29, at the Department of Ecology's headquarters, 300 Desmond Dr., Rm. 1-S17, Lacey.

The proposed rule, entitled *Uses and Limitations of the Water Pollution Control Revolving Fund*, is posted on the Internet at: http://www.wa.gov/ecology/leg/arcc_all.html. Through Nov. 6, people may also obtain copies of the rule or send comments on it by contacting Brian Howard, Ecology, P.O. Box 47600, Olympia, WA 98504-7600, (360) 407-6510.

**STATE OF WASHINGTON
PUBLIC NOTICE OF PROPOSED RULEMAKING:**

Proposed amendments to Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund. The Department of Ecology is holding a public hearing to discuss the proposed changes. The hearing is scheduled on October 29, 1998, 10:00 AM, Ecology Building, 300 Desmond Drive, Room 1-S17, Lacey, WA. A public review and comment period commences on October 13 and runs through close of business, November 6. Comments may be presented at the hearing or mailed or faxed to Brian Howard at the address below. For more information call, write, fax, or e-mail Brian Howard, Department of Ecology, Water Quality Program, Box 47600, Olympia, WA 98504-7600, phone (360) 407-6510, fax (360) 407-6426, e-mail brho461@ecy.wa.gov.

**STATE OF WASHINGTON
PUBLIC NOTICE
OF PROPOSED
RULEMAKING**

Proposed amendments to Chapter 173-98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund. The Department of Ecology is holding a public hearing to discuss the proposed changes. The hearing is scheduled on October 29, 1998, 10:00 a. m., Ecology Building, 300 Desmond Drive, Room 1-S17, Lacey, WA. A public review and comment period commences on October 13 and runs through close of business, November 6. Comments may be presented at the hearing or mailed or faxed to Brian Howard at the address below. For more information call, write, fax, or e-mail Brian Howard, Department of Ecology, Water Quality Program, Box 47600, Olympia, WA 98504-7600, phone (360) 407-6510, fax (360) 407-6426, e-mail brho461@ecy.wa.gov.

Date of publication in the Seattle Daily Journal of Commerce, October 13, 1998.

10/13(98371)

Appendix B: Language of WAC 173-98 as amended

Appendix B: Chapter 173-98 WAC: Uses And Limitations of the Water Pollution Control Revolving Fund

- 173-98-010 What is the purpose of this chapter?
- 173-98-020 What are the definitions of key terms?
- 173-98-030 How, and under what conditions, can money from the state water pollution control revolving fund be used?
- 173-98-040 Where can I obtain more detail about the application, review and issuance processes for funds from state water pollution control revolving fund?
- 173-98-050 What are the limitations on the use of funds and how are the funds categorized? .
- 173-98-060 What is the Step Process for planning facilities and activities projects?
- 173-98-070 What other laws, regulations or requirements must recipients comply with?
- 173-98-080 Indemnification.
- 173-98-090 How do I make sure my project is included in the Intended use plan?
- 173-98-100 How do recipients comply with the State environmental review process?
- 173-98-110 What are the repayment options and schedules? .
- 173-98-120 General provisions.

WAC 173-98-010 What is the Purpose of this Chapter.

The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the state water pollution control revolving fund (SRF), as authorized by chapter 90.50A RCW. This fund provides financial assistance to applicants throughout the state of Washington who need such assistance to meet high priority water quality management needs.

WAC 173-98-020 Definitions. What are the definitions of key terms?

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) “Act” means the Federal Water Pollution Control Act (33 U.S.C. 4661 et seq.).
- (2) “Applicant” means a public body requesting financial assistance for water pollution control facilities projects authorized in section 212 of the act. “Applicant” can also mean an entity. other than a public body which requests financial assistance authorized by sections 319 and 320 of the act. An entity must be financially stable and clearly have the capacity to repay their loans.
- (3) “Approvable” means:
 - All major department comments on the draft document (i.e. facilities plan or plans and specifications) have been addressed.
 - Preliminary State Environmental Policy Act (SEPA) review checklists have been prepared for the project or the project is in compliance with SEPA.
 - The SRF State Environmental Review Process (SERP) review checklists have been prepared for the project or the project is in compliance with SERP. Only the final written department

Appendix B: Language of WAC 173-98 as amended

approval remains.

- (4) "Construction" means the erection, installation, expansion, or improvement of water pollution control facilities or activities.
- (5) "Cost-effective alternative" means that alternative with the lowest present worth or equivalent annual value that achieves the requirements of the project while recognizing the environmental and other nonmonetary considerations.
- (6) "Coverage Requirement" means annual net revenue which, after the payment of senior lien obligations and together with utility local improvement district assessments (if applicable), is at least equal to one-hundred twenty percent of annual debt service on the loan and any other obligations on a parity therewith.
- (7) "Defeasance" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.
- (8) "Department" means the Washington state department of ecology.
- (9) "Design" means the plans and specifications for water pollution control facilities or activities.
- (10) "Director" means the director of the Washington state department of ecology or his or her authorized designee.
- (11) "The effective date of the loan agreement" means be the date the loan agreement is signed by the department's Water Quality Program Manager.
- (12) "EPA" means the U.S. Environmental Protection Agency.
- (13) "Existing residential need" means work required on the recipient's water pollution control facilities for the existing residential population in order to meet the recipient's National Pollution Discharge Elimination System or state waste discharge permit.
- (14) "Facilities plan" means plans and studies necessary for treatment works to comply with enforceable requirements of the act and with state statutes. Facilities plans must include a systematic evaluation of alternatives that are feasible in light of the unique demographic, environmental or ecological, topographic, hydrologic and institutional characteristics of the area. Facilities plans must also demonstrate that the selected alternative is cost-effective.
- (15) "Federal capitalization grant" means a federal grant awarded by EPA to the state as seed money to help establish the state water pollution control revolving fund.
- (16) "Financial assistance" means each of the four types of assistance specified in WAC 173-98-030 (1)(b) through (f) and other assistance authorized by Title VI of the act and chapter 90.50A RCW.
- (17) "SRF Loan Agreement" means a legal contract between a recipient and the state, enforceable under state law, and specifying the terms and schedules under which assistance is provided.
- (18) "Fund" means the state water pollution control revolving fund.
- (19) "General Obligation Debt" means an obligation of the recipient secured by annual *ad valorem* taxes levied by the recipient and by the full faith, credit and resources of the recipient.
- (20) "Initiation of operation" means the actual date the water pollution control facilities initiates operation and the entity begins using the facilities for its intended purpose. This date may occur prior to final inspection and will be determined by the department after consultation with the recipient. This date may be the same or earlier than the date of project completion.
- (21) "Intended use plan (IUP)" means a plan identifying the intended uses by the department of the amount of funds available for financial assistance from the state water pollution control revolving fund (SRF) for that fiscal year as described in section 606(c) of the act. The projects on the IUP will be ranked by environmental and financial need.

Appendix B: Language of WAC 173-98 as amended

- (22) “Nonpoint source water pollution” means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to,
- (a) atmospheric deposition, surface water runoff from agricultural lands, urban areas, forest lands subsurface or underground sources, and
 - (b) discharges from boats or other marine vessels.
- (23) “Plans and specifications” means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. “Plans and specifications” and “design” may be used interchangeably.
- (24) “Project” means the scope of work for which financial assistance is issued.
- (25) “Project completion” means the date the project is determined by the department as being complete .
- (26) “Public body” means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes recognized as such by the federal government at the time the SRF loan agreement is signed.
- (27) “Public health emergency” means a situation declared by the Washington state department of health in which illness or exposure known to cause illness is occurring or is imminent.
- (28) “Recipient” means an applicant for financial assistance which has signed an SRF loan agreement.
- (29) “Reserve Account” means, for a loan that constitutes revenue-secured debt, the account of that name created in the loan fund to secure the payment of the principal of and interest on the loan.
- (30) “Revenue-Secured Debt” means an obligation of the recipient secured by a pledge of the revenue of a utility and one not a general obligation of the recipient.
- (31) “Senior Lien Obligations” means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.
- (32) “Severe public health hazard” means a situation declared by the state department of health and the department in which the potential for illness exists, even if the illness is not currently occurring or imminent. For the purposes of this chapter there must be contamination of drinking water or contamination must be present on the surface of the ground in such quantities and locations to create a potential for public contact. The problem must generally involve a serviceable area including, but not limited to, a subdivision, town, city, or county. Also, the problem must be one which cannot be corrected through more efficient operation and maintenance of the wastewater disposal system(s).
- (33) “State water pollution control revolving fund (SRF)” means the water pollution control revolving fund established by RCW 90.50A.020.
- (34) “Water pollution” means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including but not limited to change in
- (a) temperature,
 - (b) taste,
 - (c) color,
 - (d) turbidity,
 - (e) or odor

It also means a discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render those waters harmful, detrimental, or injurious to the public health, safety, or welfare, or injurious to domestic, commercial, industrial,

Appendix B: Language of WAC 173-98 as amended

agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(35) “Water pollution control activities” means actions taken by a public body to achieve the following purposes:

- (a) To control nonpoint sources of water pollution;
- (b) To develop and implement a comprehensive conservation and management plan for estuaries; and
- (c) To maintain, improve, or protect water quality through the use of water pollution control facilities, management programs, or other means.

(36) “Water pollution control facilities means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is not limited to, sanitary sewage, stormwater, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include facilities, equipment, and collection systems which are necessary to protect federally designated sole source aquifers.

WAC 173-98-030 How, and under what conditions, can money from the state water pollution control revolving fund be used?

(1) Uses of the money. The state water pollution control revolving fund (SRF) may be used for the following purposes:

- (a) To accept and retain funds from capitalization grants provided by the federal government, state matching funds appropriated in accordance with chapter 90.50A RCW, payments of principal and interest, and any other funds earned or deposited;
- (b) To make loans to applicants in order to finance the planning, design, and/ or the construction of water pollution control facilities, make loans to applicants for the implementation of nonpoint source pollution control management programs (which includes planning and implementing elements of the nonpoint source pollution assessment and management program), and make loans to applicants for the development and implementation of a comprehensive estuary conservation and management plan, subject to the requirements of the act;
- (c) To provide loans for up to twenty years reserve capacity for water pollution control facilities;
- (d) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities. (March 7, 1985, was the date that the amendments adding Title VI to the act were first considered by Congress. Any refinancing agreements must be for construction initiated after that date according to federal and state law);
- (e) To guarantee or purchase insurance for local obligations where such an action would improve credit market access or reduce interest rates;

Appendix B: Language of WAC 173-98 as amended

(f) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of those bonds will be deposited in the fund; and

(g) To finance the reasonable costs incurred by the department in the administration of the account as authorized by the act and chapter 90.50A RCW.

(2) Policies for establishing the terms of financial assistance. Recipients interest rates will be based on the average market interest rate. The average market interest rate will be based on the daily market rate published in the *Bond Buyer's Index* for tax exempt municipal bonds. The average market rate will be calculated three months before the SRF funding cycle begins using the daily market interest rate for those months. The average market interest rate will be recalculated three months before the Draft IUP is issued, based on the daily market interest rate for those months. If that interest rate is at least 0.1 percent below the previously calculated average market interest rate, recipients interest rates will be based on the lower average market interest rate rounded to the nearest 0.1 percent. Recipients will not receive an interest rate higher than the interest rate established at the beginning of the funding cycle. Loan terms and interest rates are as follows:

Repayment Period	<i>Project Duration</i>	Interest Rate
Up to five years:	Projects must be completed in less than two years from the effective date of the SRF loan agreement to project completion.	Zero percent interest rate.
Up to five years:	Projects that take two-years or more to complete from the effective date of the SRF loan agreement to project completion.	Forty percent of the average market rate.
More than 5 but less than 15-years:	Not applicable.	Sixty percent of the average market rate.
15 to 20-years:	Not applicable.	Seventy-five percent of the average market rate.

(3)Financial Hardship Assistance For facilities Construction.

(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of 1.5 percent of the median household income. Median household income is based on census data. Median household income data is updated yearly based on inflation. If median household income data is not available for a community the department will allow a local government to conduct a scientific survey to determine the median household income.

(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. For example, if an applicant applies for \$10 million to finance facilities construction costs, where

Appendix B: Language of WAC 173-98 as amended

\$6 million is for existing residential need and the remaining \$4 million is for growth, the hardship analysis would be based on the \$6 million for existing residential need.

(c) If the department determines that financial hardship exists, it may structure loan agreements with terms to help keep residential user charges below the financial hardship level for the existing residential need, if possible. Hardship terms may include lengthening the repayment period to a maximum of twenty years, lowering the interest rate, or a combination of a lower interest rate and an extended term.

(d) For some facilities projects, financial hardship cannot be established using residential user fees as a percent of median household income. In these situations, financial hardship determinations will be made on a case by case basis.

(e) If an applicant is requesting financial hardship assistance, it should submit a completed Financial Hardship Analysis Form with its application for financial assistance.

WAC 173-98-040 Where can I obtain more detail about the application, review and issuance processes for funds from state water pollution control revolving fund?

The department publishes guidelines which describe in greater detail the financial assistance application, review and issuance processes, the terms of assistance, and other elements of this program.

WAC 173-98-050 What are the Limitations on the use of funds and how are the funds categorized? .

(1) The fund may be used to provide financial assistance to applicants for the construction of water pollution control facilities which are identified in the intended use plan and activities eligible for assistance under sections 319 and 320 of the act.

(2) Unless the demand for funding is limited, SRF loan agreements are subject to the following funding category limitations:

(a) Not more than eighty percent of the fund will be available for the construction of facilities as established under section 212 of the act and subject to the requirements of that act. Those projects will be under the water pollution control facilities category.

(b) Not more than ten percent of the fund will be available for the implementation of a program established under section 319 of the act for the management of nonpoint sources of pollution, and subject to the requirements of that act. Those projects will be under the nonpoint source category.

(c) Not more than ten percent of the fund will be available for the development and implementation of a comprehensive conservation and management plan under section 320 of the act relating to the National Estuary Program, and subject to the requirements of that act. Those projects will be under the comprehensive estuary conservation and management category (estuary category).

(d) Not more than fifty percent of the fund in each category will be available to any one applicant.

(3) In accordance with federal law, loan offers identified on the final IUP will be effective for up to one year from the date of the offer or until the issuance of the next year's final IUP. All SRF loan offers

Appendix B: Language of WAC 173-98 as amended

that do not result in a signed SRF loan agreement within the effective offer period are automatically terminated. Funds reserved for SRF loan agreements that are not signed within the effective period maybe carried over and made available for the next year's funding cycle.

(4) The fund may not be used for activities primarily directed toward water resources or water pollution control activities or facilities or portions of those facilities that are primarily intended to control, transport, treat, dispose, or otherwise manage commercial, institutional or industrial wastewater or other water pollution control needs from those sites. Costs associated with commercial, institutional or industrial pretreatment are not eligible for funding. However, commercial, institutional or industrial wastewater flows attributable to a public body's water pollution control facilities which are determined by the department to be "small" may be allowed. Small flows are commercial, institutional, or industrial flows that comprise less than five percent individually or thirty percent collectively of the total flow.

(5) The fund may not be used to make direct loans to applicants to support the nonfederal share of eligible portions of projects receiving assistance under Title II of the act. The fund may be used to finance portions of such projects which were determined to be ineligible for federal assistance but which are eligible under the SRF program.

(6) Non eligible project costs include, but are not limited to the following:

- (a) Acts of nature: Projects related to acts of nature that alter the natural environment, thereby causing water quality problems
- (b) Aquatic plant control for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality
- (c) Engineering reports
- (d) Facilities that propose to meet or maintain primary treatment of domestic sewage
- (e) Flood control: Projects primarily designed to provide flood control
- (f) Lake implementation projects where there is no public access
- (g) Reclamation of abandoned mines or if used in the mining process
- (h) State and federal agency water pollution control programs that are part of the agency's mission, goals or statutory responsibilities
- (i) Scientific research unrelated to a specific project
- (j) Sewers: side sewer laterals or individual pump stations on private residential property, or other appurtenances where the facilities are not owned and maintained by a public body
- (k) Solid and hazardous waste facilities
- (l) Stormwater activities and facilities associated exclusively with flood control

(7) Non eligible project component costs include, but are not limited to the following:

- (a) Bond costs for debt issuance

(b) Employee training not related to or identified in an SRF loan agreement

(c) Equipment required for site and building maintenance

(d) Facilities components:

- i. abandonment of existing structures,
- ii. bonus or acceleration payments to contractors to meet contractual completion dates for construction,
- iii. capacity in excess of twenty years
- iv. construction claims and associated costs determined to be non-meritorious,
- v. construction claims, meritorious, in excess of the maximum allowable loan amount,

Appendix B: Language of WAC 173-98 as amended

- vi. corrective action plans for the one-year performance certification program,
 - vii. cost-plus-a-percentage-of-cost contracts (also know as multiplier contracts),
 - viii. demolition of structures that are not interfering with proposed construction,
 - ix. replacement parts, for an initial set of spare parts for equipment that is critical for facilities to operate in compliance with discharge permit requirements
- (e) Fines and penalties due to violations of or failures to comply with federal, state, or local laws
 - (f) Interest on bonds, interim financing, and associated costs to finance projects
 - (g) Lake implementation projects where there is no public access
 - (h) Land acquisition for siting of wastewater treatment plants, sewer rights-of-way, and easements, and associated costs
 - (i) Landscaping for aesthetic reasons
 - (j) Legal expenses other than those associated with development of local ordinances for water quality protection and improvement or associated with the use of a bond counsel in developing a loan agreement
 - (k) Lobbying or expenses associated with lobbying
 - (l) Monitoring equipment used by an industry for sampling and analyzing industrial discharges to municipal water pollution control facilities
 - (m) Office equipment
 - (n) Operating expenses of local government, such as the salaries and expenses of a mayor, city council member, city attorney
 - (o) Overtime differential paid to employees of local government to complete administrative or force account work
 - (p) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means
 - (q) Preparation of SRF loan applications
 - (r) Previously funded objectives financed with an SRF loan
 - (s) Rework costs
 - (t) Routine or ongoing operation and maintenance costs
 - (u) Seminar and conference fees not identified in a SRF loan agreement
 - (v) Vehicle purchase or lease except those vehicles that are integral to a treatment process e.g., sludge truck

WAC 173-98-060 What is the step process for planning facilities and activities projects?

(1) The step process for facilities. To be eligible for an SRF loan, facilities projects must proceed according to a systematic method known as the “Step Process.” Before a public body with a facilities project is eligible to apply for funds, all previous steps must be approved or approvable by the department in order to help ensure that funds are well spent on projects proceeding towards a successful and viable outcome. Funding for site-specific facilities planning (step 1) or design (step 2) does not guarantee the awarding of future loans for construction (step 3). The loan agreement will not be signed until all previous steps have been completed and approved by the department.

- (a) Planning (Step 1). Step 1 involves the preparation of a site-specific facilities plan that identifies and prioritizes the cost-effective alternatives for addressing a water pollution control

Appendix B: Language of WAC 173-98 as amended

problem with or without state and federal funding. If there is an existing engineering report, prepared with or without department funding, it must be upgraded for SRF eligibility if it does not meet the definition of a facilities plan.

(b) Design (Step 2). Step 2 includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan.

(i) Facilities plan must be approved or deemed approvable by the department before an application for design can be considered for funding. Site-specific facilities planning documents not funded by a department grant or loan must also be approved or approvable by the department before an application for design can be considered.

(ii) Applications for Step 2 loans will be accepted and considered for funding if it can be documented by the applicant that Step 1 planning is approved within ninety days after the close of the application period.

(iii) Due to specific loan review criteria, facilities plan approved by the department for purposes other than securing a loan will not be accepted for design purposes.

(iv) Facilities plan approved by the department more than two years prior to the close of the SRF application period must contain evidence of department review to ensure the document reflects current conditions.

(c) Construction (step 3). Step 3 includes the actual building of facilities based on the approved design.

(i) Design must be approved or deemed approvable by the department before an application for construction can be considered for funding

(ii) Applications for Step 3 loans will be accepted and considered for funding if it can be documented by the applicant that Step 2 design is approved within ninety days after the close of the application period.

(d) Design and construction (step 4): In some cases, design and construction may be combined into one loan award. Applications for step 4 loans will be accepted and considered for funding if it can be demonstrated that Step 2 design can be completed and approved by the department within one year of the date the final IUP is made public. The SRF loan share of the total eligible project under Step 4 cannot exceed 50 percent of the amount available in the appropriate funding category, or \$1, 000, 000, whichever is less.

(e) Step Compliance and Step Deviations. There is one situation in which a deviation from the step process can be allowed:

(i) If the Washington State Department of Health has declared a public health emergency AND if the proposed project would remedy this situation,

(ii) In this situation, the department will accept applications for funding consideration that do not follow the Step Process. However, no loan agreement will be signed until all previous steps have been completed and approved by the department. This deviation from the Step Process will only allow an application to be considered for funding. It does not allow a loan to be awarded until all Step requirements have been satisfied.

(iii) If a deviation is approved the applicant may deviate by only one step. For instance, the department could accept an application for design if planning was not completed and approved, or an application for construction if design was not

Appendix B: Language of WAC 173-98 as amended

completed and approved. However, the department may not accept an application for construction if planning was not completed and approved.

(2) The Step Process for Activities. In most cases, the step process for activities is not required. However, those applications proposing to implement a specific project identified in a completed comprehensive plan are given additional consideration in the evaluation process. Agricultural best management practices that involve improvements on private property, or lake projects, must follow the step process.

(a) Planning (step 1) involves the identification of problems and evaluation of cost effective alternatives, based on environmental and economic considerations, for correcting and preventing water quality problems. Specific activities may include planning for watershed management, ground water management areas, lake restoration, and water quality assessment and other related activities.

(b) Implementation (step 2) includes the actual implementation of the project based on the approved planning document.

WAC 173-98-070 What other laws, regulations or requirements must recipients comply with?

(1)(a) All recipients shall comply with all applicable federal, state, and local laws, orders, regulations, and permits. Applications must not be inconsistent with pertinent adopted water quality plans including, but not limited to, plans under sections 208, 303(e), 319, and 320 of the act.

(b) The Puget Sound water quality management plan constitutes the comprehensive conservation and management plan required in section 320 (b)(4) of the act. Plans must not be inconsistent with shoreline master programs, ground water management programs and stormwater plans, combined sewer overflow (CSO) reduction plans and county or city comprehensive sewer plans.

(c) In accordance with the SRF loan agreement, the applicant shall provide assurances that the necessary permits required by authorities having jurisdiction over the project have been secured. Copies must be available to the department upon request.

(2) Recipients shall fully comply with all federal, state, and local laws and regulations related to procurement, discrimination, labor, job safety, and drug-free environments. The recipient shall also comply with the state and federal minority-and-women-owned businesses regulations.

(3) If an SRF loan is provided for water pollution control facilities, recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project, phase, or segment completion.

(4) Recipients must maintain accounting records in accordance with “generally accepted government accounting standards.” These standards are defined as, but not limited to, those contained in the United States General Accounting Office (GAO) publication “Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.” For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These accounts must be maintained as separate accounts.

(5) Accounting irregularities may result in an immediate stoppage of payment until irregularities are resolved. The director may require immediate repayment of misused loan funds.

Appendix B: Language of WAC 173-98 as amended

(6) According to RCW 90.50A.060, in the event of loan default, the state of Washington may withhold any amounts otherwise due to the recipient from the state and direct that such moneys be applied to the indebtedness and deposited into the SRF.

(7) Appeals of SRF loan agreement decisions will be processed in accordance with the water quality financial assistance appeals procedure. The only decisions which can be appealed are written decisions by the department made during the effective SRF loan agreement period . Appeals must be filed in writing to the department within forty-five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.

(8) The department, or at the department's discretion another authorized auditor, will audit the SRF loan agreement and records.

(9) Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the funds disbursed.

WAC 173-98-080 Indemnification.

(1) The department shall in no way be held responsible for payment of salaries, consultant's fees, and other overhead costs related to an SRF loan agreement issued to a recipient.

(2) To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of an SRF loan agreement except for such damage, claim, or liability resulting from the negligent act or omission of the department.

WAC 173-98-090 How do I make sure my project is included in the Intended Use Plan?

(1) Applicants must apply for SRF financial assistance in order for their projects to be included on the IUP. Projects must be on the IUP in order to receive SRF financial assistance.

(2) Projects in all three categories will be ranked according to environmental and financial need. Projects in each category which have the highest environmental and financial need will be given priority for assistance under the SRF program. Because funds must be used in a timely manner to ensure that all available federal funding is received by the state, readiness to proceed is also used in establishing the priority of projects.

(3) Applications for financial assistance in the water pollution control facilities category (WAC 173-98-050 (2)(a)) must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs.

(4) Applications for financial assistance in the nonpoint source category (WAC 173-98-050 (2)(b)) must address the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's nonpoint source pollution assessment and management program.

(5) Applications for financial assistance in the comprehensive estuary conservation and management category (estuary category) (WAC 173-98-050 (2)(c)) must meet applicable environmental needs

Appendix B: Language of WAC 173-98 as amended

outlined above and must meet needs identified in the Puget Sound water quality management plan or the respective plans for other federally designated estuaries in the state of Washington.

(6) Financial need would normally focus on the need to maintain user charges and fees at affordable levels. Both the priority process and the terms of the SRF loan will be directed toward this objective. Unless the provisions of water pollution control facilities or activities has caused a financial hardship, refinancing of completed projects or segments would generally be low priority.

(7) Applicants must fully describe the environmental and the financial need for the project.

(8) The department will prepare the draft IUP prior to the award of each federal capitalization grant from EPA or in the absence of a federal capitalization grant before principal and interest repayments to the SRF are offered. The IUP will generally list projects in the order that projects may be offered financial assistance.

WAC 173-98-100 How do recipients comply with the state environmental review process?

(1) All recipients which receive SRF loans must meet the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC. Additional provisions are currently needed by federal law under Title VI of the act to satisfy the state's responsibility to help ensure that recipients comply with the National Environmental Policy Act (NEPA) and other applicable environmental laws, regulations, and executive orders. The lead agency (WAC 197-11-050(2)) responsible for SEPA compliance for each project under the SRF program shall also comply with the following additional provisions. When a categorical exclusion, finding of no significant impact, or a record of decision has been issued under NEPA for the same project scope of work, no additional environmental documentation is required. Applicants will need to adopt the federal environmental documentation to meet their responsibilities as required by SEPA rules WAC 197-11-600, 197-11-610, and 197-11-630. If federal environmental documentation has not been submitted for approval to the appropriate federal agency, applicants and designated lead agencies must:

(a) Consult with the department before determining that the project is categorically exempt from SEPA and obtain concurrence that the project meets the criteria for a categorical exemption (WAC 197-11-305) and give public notice of the categorical exemption by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the facilities plan and other environmental information.

(b) Consult with the department prior to issuing a threshold determination (WAC 197-11-330), and submit a copy of the environmental checklist (WAC 197-11-315) and a recommended threshold determination to the department.

(c) Obtain written concurrence from the director with the recommended threshold determination as to whether a determination of nonsignificance (DNS) (WAC 197-11-340) or an environmental impact statement (EIS) is to be issued prior to issuing the actual document.

(d) Issue the threshold determination, determination of nonsignificance (DNS) or determination of significance (DS) (WAC 197-11-360) and submit copies to the department; two copies shall be sent to the department's environmental review section and one copy to the regional water quality program (WQ) of the department. The director must concur in writing with the findings of the checklist and DNS if a DNS is issued.

Appendix B: Language of WAC 173-98 as amended

- (e) Give public notice of the threshold determination by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the threshold determination, facilities plan, and other environmental information.
- (f) Distribute copies of the threshold determination and supporting documents to other affected local, state, and federal agencies, Indian tribes, and the public.
- (g) When a DS is issued, the lead agency will develop the final scope of elements to be addressed in the environmental impact statement (EIS) and obtain written concurrence from the director. The department shall be consulted throughout the EIS process.
- (h) Distribute copies of the draft and the final EIS to the department; two copies shall be sent to both the environmental review section and the department's Water Quality program.
 - (i) Give public notice of the draft and final EIS by publishing notices in a newspaper of area-wide circulation. Notices shall include the locations where the public may review the draft and final EIS or obtain copies.
 - (j) Distribute copies of the draft and final EIS to other affected local, state, and federal agencies, Indian tribes, and the public.
 - (k) The director must concur in writing with the finding of the final EIS.
- (2) The lead agency shall issue a notice of action for the final EIS regarding the preferred alternative in accordance with RCW 43.21C.080, WAC 197-11-680, and 197-11-990.
- (3) A cost-effectiveness analysis will be required for all SRF projects. Planning must include a comparison of the total cost, i.e., capital, operation and maintenance, and replacement costs of the project with other alternatives, including the no action alternative, . The comparison of the total costs, e.g., total present worth or annual equivalent costs of projects for the planning period, must be included. Cost-effective analyses must also include nonmonetary cost of the project, i.e., the environmental impact, resource utilization, implementability, etc. This analysis must be included in the planning document and must be summarized in the EIS or DNS. Financial assistance under the SRF program will be offered to the cost-effective solution to the water pollution control problem.
- (4) All mitigation measures committed to in the environmental checklist or state EIS, or in the finding of no significance impact/ environmental assessment or record of decision/ federal EIS (for federally approved projects) will become SRF loan agreement conditions. Applicants must complete all mitigation measures required. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.
- (5) The applicant must comply with the requirements of applicable environmental laws, regulations, and executive orders. Concurrence from the director will be based on best available information provided by the applicant. The department is not responsible for concurrence based on erroneous information.

WAC 173-98-110 What are the repayment options and schedules?

- (1) General provisions. When the scope of work identified in the SRF loan agreement has been fully completed and/or the initiation of operation date has been determined:
 - (a) The department and recipient will execute a final SRF loan agreement amendment which details the final loan amount. This amount will include the principal from disbursements made to recipients and accrued interest. Interest will accrue on each disbursement as it is paid to the recipient.

Appendix B: Language of WAC 173-98 as amended

(b) The department will prepare according to the SRF loan agreement, a repayment schedule which fully amortize the final loan amount within twenty years of project completion. The first repayment of principal and interest will be due no later than one year after the initiation of operation date. Equal payments will be due every six months after the first payment. Loan balances may be repaid or additional principal payments may be made at any time without penalty.

(c) If any amount of the final loan amount or any other amounts owed to the department remains unpaid after it becomes due and payable, the department may assess a late charge. The late charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and until it is paid in full.

(d) If the due date for any semi-annual payment falls on a Saturday, Sunday, or designated holiday for Washington State agencies, the payment shall be due on the next business day for Washington State agencies.

(2) Phased or segmented project. Where a project has been phased or segmented, the general provisions for repayment shall apply to the completion of individual phases or segments.

(3) More than five years to complete project. When a project approved by the department takes longer than five years to complete, loan repayment must begin within five years of the first disbursement for the project, unless the director determines that the fund is fiscally sound without this repayment schedule. Repayments for these loans must follow the general provisions as outlined in subsection (1)(b) of this section.

(4) Security for loan repayment . Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its SRF loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(a) General obligation. When repayment of a loan is secured by a general obligation pledge, the recipient shall pledge for so long as the loan is outstanding, to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors, on all of the taxable property within its boundaries in an amount sufficient, together with other money legally available and to be used for loan repayment, to pay when due the principal of and interest on the loan, and the full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(b) Revenue obligation. Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments. In such cases:

(i) Lien position. Repayment of a loan shall constitute a lien and charge (A) upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations and, (B) if applicable, upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(ii) Coverage Requirement. For so long as the loan is outstanding, the recipient shall establish, maintain, and collect such rates and charges for utility service which will produce net revenue which, together with utility local improvement district assessments in the utility local improvement district deposited in the loan fund, shall be at least equal to the coverage requirement. "Coverage requirement" means annual net revenue which, after the payment of

Appendix B: Language of WAC 173-98 as amended

senior lien obligations and together with utility local improvement district assessments (if applicable), is at least equal to one-hundred twenty percent of annual debt service on the loan and any other obligations on a parity therewith.

(iii) Reserve Requirement. For loans that are revenue-secured debt with terms greater than five years, the recipient must accumulate a reserve for the loan equivalent to at least the average annual debt service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a reserve account in the loan fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first. "Reserve account" means, for a loan that constitutes revenue-secured debt, an account of that name created in the loan fund to secure the payment of the principal of and interest on the loan. The amount on deposit in the reserve account may be applied by the recipient (i) to make, in part or in full, the final repayment to the department of the loan amount or, (ii) if not so applied, for any other lawful purpose of the recipient once the loan amount, plus interest and any other amounts owing to the department hereunder, have been paid in full.

(5) Repayment from other than pledged sources. A recipient may repay any portion of its loan from any legally available funds other than those pledged in its SRF loan agreement to repayment.

(6) No defeasance or advance refunding. So long as the department holds a loan, the recipient shall not be entitled to, and shall not effect, its economic defeasance or advance refunding.

WAC 173-98-120 **General provisions.**

(1) Sale of facilities to private enterprises. Recipients may sell facilities for which the SRF loan was provided to private enterprises; however, the SRF loan agreement must be terminated in accordance with the terms of the agreement and the assistance repaid to the SRF immediately upon sale.

(2) Refinancing. The refinancing of existing debt obligations shall be limited to water pollution control facilities where project construction began after March 7, 1985. Applicants requesting refinancing must meet all the requirements contained in the act. They must be on the IUP before assistance will be offered and must be eligible to receive such assistance.

(3) Self certification. The department may authorize a recipient to certify compliance with selected program requirements. The recipient must request such certification authority and document that it has the capability and resources, that it is in the best interest of the state, and that the request is consistent with state and federal laws and regulations. Concurrences required in the environmental review process cannot be delegated to recipients.

Appendix C: Comments on Proposed Changes to WAC 173-98

Appendix C: Comments on Proposed Changes to WAC 173-98

Written comment 1 - Robert J. Alberts, PE, Director of the Public Works Department of the City of Pasco:



PUBLIC WORKS DEPARTMENT (509) 545-3444 / Scan 726-3444 / Fax (509) 545-3499
P.O. BOX 293, 525 NORTH THIRD AVENUE, PASCO, WASHINGTON 99301

October 26, 1998

WATER QUALITY PROGRAM

FAXED
10-26-98
4:40 pm

Brian Howard
Department of Ecology
PO Box 47600
Olympia, Washington 98504 7600

RE: Comments on Water Quality Program Proposed Rule Changes to Loan Program

Dear Mr. Brian:

Below are my comments on the proposed rule changes to the Water Quality Program Loan Program:

Section WAC 173-98-030(2): Since the loan program is using funds that are tax dollars, I do not think it is appropriate to loan the tax dollars back to the taxpayer at a higher interest rate. The federal programs used to be grants because it is taxed dollars. I recommend that the interest rate be no higher than three percent (3%).

Section WAC 173-98-050: I recommend agricultural wastewater (Food Processing) spray systems onto agricultural lands be eligible. These systems must be owned by a City.

Section WAC 173-98-050(5): Construction claims due to unforeseen soil conditions should be eligible for additional SRF funds. The Engineer has no control of subsurface conditions.

Sincerely,

Robert J. Alberts, PE
Director, Public Works

kah

xc: L/Project File

Appendix C: Comments on Proposed Changes to WAC 173-98

Written Comment 2 - John Campbell, City Manager, City of Chehalis:

CITY OF CHEHALIS

80 N.E. Cascade Avenue
P.O. Box 871 ■ Chehalis, Washington 98532
(360) 748-6664 ■ FAX (360) 748-0651

November 5, 1998

RECEIVED
NOV 6 1998

Brian Howard
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

DEPARTMENT OF ECOLOGY

Dear Mr. Howard:

I'm responding to DOE's current proposed rule making concerning the State Revolving Fund. We've noticed that one of the proposed revisions, in WAC 173-98-090(2), would change "readiness to proceed" from a discretionary factor to a mandatory factor in establishing the priority of projects.

As you may or may not know, the city of Chehalis has recently signed a consent decree with DOE concerning implementation of a TMDL for the Chehalis River. A few other things now have to happen before that decree can be approved by the court, some of which are out of our hands. It's our hope now that those steps will have been completed by March.

If they're not, however, through no fault of ours, we'd hate to think that we'd be ineligible to receive an SFL loan on the theory that we weren't ready to proceed.

Can you let us know your position on that? Thank you.

Sincerely,



David M. Campbell
City Manager

cc: Sue Mauermann, Southwest Regional Director
Keli McKay-Means, Southwest Water Quality Program